



HAWAI'I CIVIL RIGHTS COMMISSION

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MINUTES

Hawai'i Civil Rights Commission Office
June 6, 2014
2:30 p.m.

Present: Linda Krieger, Raymund Liongson, Wally Fukunaga, Artemio Baxa, and Kim Coco Iwamoto, Commissioners; Livia Wang and Bill Hoshijo, Staff; Bob Armstrong, Dan Purcell, and others, Public.

Chair Linda Krieger called the meeting to order.

Approval of Minutes

The minutes of the February 21, 2014, meeting were approved. (m/s/p Iwamoto/Liongson; 4-0)
(Commissioner Fukunaga had not yet joined the meeting).

Commissioner Fukunaga joined the meeting.

The minutes of the March 17, 2014, meeting were approved. (m/s/p Baxa/Liongson; all)

Executive Director's Report

In Deputy Executive Director (DED) Marcus Kawatachi's absence, Executive Director (ED) Bill Hoshijo presented an FY 2014 HCRC Mediation Program Year-to-Date Summary.

Summary & Details (7/1/13 through 5/30/14)

Referrals:	27
Dispositions:	25
Settlements:	15
Non-agreements:	10
Settlement Rate:	60 %
Employment cases settled:	15
Non-employment cases settled:	0
Dual-filed (EEOC/HCRC) settlements:	14
State-only settlements:	1

Primary Bases for Complaints Settled in Mediation

Disability	3
Ancestry/National Origin	3
Race	3
Age	2
Retaliation	2
Sex (pregnancy)	1

Dispositions by Mediation Center

Mediation Center of the Pacific	7/14	(settlement rate 50 %)
Private Mediators	5/5	(settlement rate 100 %)
Mediation Services of Maui	1/1	(settlement rate 100%)
West Hawaii Mediation Center	0/1	(settlement rate 0 %)
Ku'ikahi Mediation Services (Hilo)	1/2	(settlement rate 0 %)
Kauai Economic Opportunity, Inc.	1/2	(settlement rate 100%)
OVERALL	15/25	(settlement rate 64.7%)

ED Hoshijo presented a data and production report showing caseload data through June 5, 2014.

As of June 5, 2014, the report showed 401 open cases, a decrease of 28 cases from the number reported as of March 17, 2014. Of those, 10 (2.5%) were filed in 2009, 26 (6.5%) filed in 2010, 28 (7.0%) filed in 2011, 53 (13.2%) in 2012, 175 (43.6%) in 2013, and 109 (27.2%) in 2014.

The report also showed a breakdown of the status of the open cases by investigation stage.

	2009	2010	2011	2012	2013	2014	Total
Housing Cases	0	0	1	8	7	10	26
Intake Stage	0	0	2	0	107	82	191
Mediation	0	0	0	1	16	7	24
Pending Assignment	1	9	19	40	32	7	108
Active Investigation	9	17	6	5	12	3	52
TOTAL	10	26	28	54	174	109	401

It was reported that: 21.2% of all investigation cases were 2 years old or older (from date of filing); 7.5% were over 18 months but less than 2 years old; 14.7 % were over 12 months but less than 18 months old; 24.2% were over 6 months but less than 12 months old, and 32.4% were 6 months old or less.

ED Hoshijo compared the investigation caseload data to the reported data as of March 14, 2014, noting the reduction in older cases. He also noted the total caseload of 401 investigation, in comparison with the caseload of 477 reported as of July 11, 2013, a reduction of 16%.

The Commissioners approved a motion commending DED Kawatachi and staff for their efforts. (m/s/p Krieger/Fukunaga; all)

Chair Krieger commented that, looking forward, the Commission should rethink strategic changes, including statutory changes.

Commissioner Artemio Baxa added that he would like to see an independent HCRC, not administratively attached to a department.

ED Hoshijo requested an extension of time to investigate all cases from July 31, 2014, through January 31, 2015.

Commissioner Kim Coco Iwamoto indicated that she would recuse herself due to a potential conflict of interest.

The Commissioners approved an extension of time to investigate all cases through January 31, 2015. (m/s/p Liongson/ Fukunaga; 4-0, Iwamoto recused).

ED Hoshijo reported on the completion of two collaborative outreach efforts.

On May 13, 2014, Governor Abercrombie held a press conference announcing the launch of a multilingual public education campaign on the rights of domestic workers. Enacted in 2013, Act 248 provided for wage and hour and employment discrimination protections for domestic workers who were previously excluded from state law protections. First Lady Dr. Nancie Caraway convened a group including the HCRC, the Office of Community Services, the Department of Labor and Industrial Relations Wage Standards Division, the Commission on the Status of Women, and numerous service providers and community advocacy groups to plan and implement the public education effort. Around the theme, "Domestic Workers Have Rights, the effort included education through the news media, and multilingual flyers, informational cards, posters and bus signs.

The HCRC, in partnership with the Disability and Communications Access Board (DCAB) planned and implemented a public education campaign to inform health care providers and patients who are deaf, hard of hearing, and deaf blind of their respective legal obligations and rights. Under both state and federal law, health care providers are required to provide auxiliary aids and services for patients who are deaf, including sign language interpreters when required for effective communication. At a press conference held at the State Capitol on May 7, 2014, which was co-hosted by Senator Josh Green and Representative James Tokioka, the HCRC and DCAB presented a press package including a flyer for deaf patients and a flyer for health care providers.

Legislation -2014 Session

The Commissioners reviewed Legislative Summary 5, Chief Counsel Wang's final report on the 2014 Session.

BILLS ENACTED / RESOLUTIONS PASSED:

EMPLOYMENT

**[HB 1975 HD1]
SB 2420 SD1**

Criminal history record checks for certain county employees

Amends HRS § 846-2.7 to allow criminal history record checks for county employees to have access to secured areas relating to traffic management and confidential information; and for employees who use firearms for non-law enforcement purposes; exempts all 3 new categories from arrest and court record protections under HRS § 378-2.5

Status: HB 1975 ref. to LAB, JUD; hrg. before LAB on 1/24/14; passed with requested amendments; hrg. before JUD on 2/20/14, passed unamended; crossed on 3/6/14; ref. to HMS/PSM, JDL; no hearings held.

SB 2420 ref. to HMS/PSM, JDL; hrg. before HMS/PSM on 10/28/14; passed with requested amendments; hrg. before JDL on 2/21/14, passed unamended; crossed on 3/4/14; ref. to LAB, JUD; hrg. before LAB on 3/11/14, passed unamended; hrg. before JUD on 3/21/14, passed unamended; signed by Governor as Act 18 on 4/16/14

HCRC position: No opposition with agreed amendments. Staff met with CCH personnel staff and reached agreement that only provision regarding employees who use firearms for non-law enforcement purposes would be exempt from HRS § 378-2.5.

HCR 12, HD1, SD1 **Requesting UH to affirm its commitment to Title IX and VAWA**
[SCR-7] Requests UH to affirm commitments to Title IX and the Violence Against Women Act through notices, developing plans and hiring personnel dedicated to implementing these acts.

Status: HCR 12 ref. to HED, JUD; hrg. on 3/13/14 before HED, passed unamended; hrg. on 3/28/14 before JUD, passed w/ amendments; crossed to Senate on 4/8/14; referred to HRE, JDL; ; hrg. before HRE on 4/15/14, passed w/ amendments; referral to JDL waived; resolution adopted 4/24/14

SCR 7 ref. to HRE, JDL; no hearings held.

Recommendation: Support.

BILLS THAT DIED

HOUSING

HB 676, HD2 **Source of income housing discrimination**
[SB-805] Amends HRS Chapter 515 to prohibit housing discrimination based on lawful source of income.

Status: HB 676 ref. to CPC, JUD; hrg. before CPC on 1/30/13, passed w/ amendments moving prohibitions to HRS Chapter 521 (landlord tenant law); hrg. Before JUD on 1/16/14, passed w/ amendments keeping protection under landlord tenant law; 2/13/14 crossed to Senate; ref. to CPN/EGH, JDL ; no hearings held.

SB 805 ref. to CPN, JDL; hrg. before CPN on 1/30/13, deferred

HCRC position: (based on past positions) - Support, on condition of requested additional enforcement positions and funding, citing loss of capacity and impact on enforcement. Lawful public sources of income include Section 8 vouchers, social security disability insurance, unemployment compensation, food stamps, temporary assistance to needy families; lawful private sources of income can include special needs trusts, and income from legal settlements. The majority of people who receive rental assistance are people with disabilities, single female heads of households, families with children and

members of certain minority groups. Therefore, there is a correlation between those that are protected under our fair housing law and those who receive rental assistance. 13 other states have source of income protection statutes.

PUBLIC ACCOMMODATIONS

HB 1420 HD1

Service dogs in public accommodations; tags; leash

Amends Chapter 347 to require counties to issue service dog tags to trained service dogs requires service dogs to wear these tags when in public accommodations.

Status: ref. to JUD; hrg. on 1/24/14 before JUD; passed w/ amendments to only contain penalty for falsely representing an animal as a service animal; crossed on 2/6/14; ref. to JDL; hrg. on 3/21/14 before JDL; deferred.

HCRC position: Oppose. Intent is only to allow trained service dogs in public accommodations – this conflicts with HCRC’s interpretation of Chapter 489 to allow other assistance animals to be reasonable accommodations. Also conflicts with federal ADA Title II DOJ regs which do not allow a public accommodation to require documentation that an animal is licensed, trained or certified as a service animal. In addition there are no state or federal standards for determining what a trained service animal is, and out of state service dogs won’t have tags.

OTHER CIVIL RIGHTS ISSUES

HB 1740 HD1

Amends appropriation for Office of Language Access resource center and multilingual website project

Status: Ref. to HLT, FIN; hrg. before HLT on 1/24/14; passed w/ amendments; hrg. before FIN on 2/20/14, passed unamended; crossed on 2/28/14; ref. to HMS, WAM; hrg. before HMS on 3/18/14, passed w/ amendments; hrg. on 3/28/14 before WAM, passed; conf. mtg. on 4/25/14, not passed.

HCRC position: Support. Last session the HCRC supported HB 266 which created the resource center and website project.

HB 1748 HD1

Appropriates funds for financial assistance for interpreters for training and certification in medical interpretation and for development of medical glossaries in main languages spoken in Hawaii

Status: Ref. to HLT, FIN; hrg before HLT on 1/24/14; hrg. before FIN on 2/20/14, passed unamended; crossed on 2/28/14; ref. to HTH, WAM; no hearings held.

HCRC position: Support – this is another OLA bill.

HB 1889 HD1 [HB 2661]

Homeless Person’s Bill of Rights

Establishes a homeless person’s bill of rights, including the right to equal

opportunities in employment

Status: HB 1889 ref. to HUS, FIN; hrg. before HUS on 2/13/14; passed w/ amendments; hrg. before FIN on 2/25/14, passed unamended; crossed on 3/4/14; ref. to HMS, JDL; hrg. before HMS on 3/11/14, passed unamended; no hearings held by JDL

HB 2661 ref. to HUS, JUD; no hearings held.

HCRC position: Comments only. HCRC opposes discrimination and disparate treatment against people because they are poor or homeless. Regardless of socio-economic class, all of Hawaii's people should be accorded respect and dignity, equal opportunity, and equal protection of the law. People should not be denied access to goods, services, or accommodations based on discriminatory reasons. It should be recognized and acknowledged that these proposed protections, while they may overlap with existing protected bases (e.g., disability) that are disparately impacted by discrimination against the poor, are different in kind from the other protected bases in our civil rights / non-discrimination laws (race, ancestry, sex, etc.)

BILLS AND RESOLUTIONS CARRIED OVER FROM 2013 SESSION THAT DIED:

CIVIL RIGHTS COMMISSION

HB 52, HD1, SD1

Civil Rights Commission; Biased-based Policing

Makes it a violation of HRS Chapter 368 for law enforcement agencies and agents to practice biased-based policing.

Status: ref. to: JUD; hrg. on 1/25/13 before JUD, passed w/ amendments taking it out of HRS Chapter 368 and giving enforcement to the AG's office; crossed on 3/7, ref. to PSM, JDL; hrg before PSM on 3/12, passed w/ amendments; no hearings held.

HCRC position: Support intent but oppose enforcement by the HCRC.

EMPLOYMENT

**[SB-207, SD1]
HD2, SD1**

Prohibits employers from requiring employees and applicants from HB 713, disclosing social media usernames or passwords

Adds a new section to HRS Chapter 378 Part I (under HCRC jurisdiction) to prohibit an employer from requiring an employee to: a) disclose a username or password for the employee's or applicant's personal social media; b) access the employee's or applicant's personal social media in the presence of the employer; or c) divulge any personal social media, unless relevant to an investigation of employee misconduct.

Status: SB 207 ref. to: TEC, JDL; hrg. before TEC on 2/5/13, passed w/ amendments
HB 713 ref. to: LAB, JUD; hrg before LAB on 2/8/13, passed w/ amendments moving protection to HRS Chapter 378 Part III; hrg before JUD on 2/15/13, passed w/ amendments putting protection back in HRS 378 Part I; crossed on 3/7, ref. to TEC/CPN, JDL; hrg before TEC/CON on 3/20, passed w/ amendments taking protections out of HRS Chapter 378 Part I; no hearings held.

HCRC position: Support intent but move out of HCRC jurisdiction.

OTHER CIVIL RIGHTS ISSUES

HB 189 **Gender Equity on Boards and Commissions**
[SB-1295] Amends HRS Chapter 26 to require that the governor or appointing authority strive for gender equity when appointing members of state boards and commissions, and give priority to achieving the goal of gender equity when appointing members to vacancies, at-large positions, and alternates.

Status: HB 189 ref. to: JUD; hrg before JUD held on 1/25/13, passed unamended; crossed on 2/15, ref. to JDL; no hearings held.

HCRC position: Support.

A member of the public called attention to a House concurrent resolution that he thought the Commission would have an interest in, H.C.R. No. 238, calling for the DOE and DOH to convene a working group to assess whether children in Hawaii who are deaf or hard of hearing and choose aural/oral communication are provided proper training and support to learn spoken language skills.

ED Hoshijo reported that the HCRC's supplemental budget request was not approved, and that the DLIR's requests were not funded, in large part due to the downward adjustment of projected revenues issued by the Council on Revenues.

Old Business

ED Hoshijo said there was nothing new to report on *Cervelli v. Aloha Bed & Breakfast*, which remained pending before the Intermediate Court of Appeals.

New Business

There was no new business.

Announcements

ED Hoshijo reminded the Commissioners that the HCRC would have a contingent walking in the 2014 Pride Parade on Saturday, June 7.

Next Meeting

The next meeting was scheduled for July 15, 2014, at 2:30 p.m., subject to polling of and confirmation by the Commissioners.

CLOSED EXECUTIVE SESSION

The Commission went into closed executive session to discuss a personnel matter.

Adjournment